IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

MONDAY, THE 24TH SEPTEMBER 2007 / 2ND ASWINA 1929

WP(C).No. 31986 of 2006(G)

PETITIONER:

ROY M. MATHEW,
MANAGING DIRECTOR, MUTHOOT MINI HOTELS(P)LTD.,
MUTHOOT BUILDINGS, KOZHENCHERRY.

BY ADV. SRI.S.SREEKUMAR,
SRI.P.MARTIN JOSE.

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY**
   COMMISSIONER & SECRETARY (REVENUE),
   GOVT. SECRETARIAT, TRIVANDRUM.

2. **THE DISTRICT COLLECTOR,**
   CIVIL STATION, KAKKANADU, ERNAKULAM.

3. **THE TAHASILDAR,**
   TALUK OFFICE, KANAYANNUR, COCHIN-11.

4. **THE VILLAGE OFFICER,**
   ERNAKULAM VILLAGE, COCHIN-11.

BY GOVERNMENT PLEADER SRI. TEKCHAND.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 24/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

W.P.(C). NO.31986/2006:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE ORDER NO. K. DIS.43088/93/B10 DTD. 19/06/1994 OF R.2.

EXT.P.2: COPY OF THE ASSESSMENT ORDER NO. B3-5134/93 DTD. 30/11/94 ISSUED BY R.3.

EXT.P.3: COPY OF THE ORDER OF ASSESMENT DTD. 30/11/1994 ISSUED TO KALAYANIKUTTY.

EXT.P.4: COPY OF THE ORDER OF ASSESSMENT DTD. 30/11/1994 ISSUED TO THE PETITIONER.

EXT.P.5: COPY OF THE NOTICE DTD. 13/01/1997 ISSUED BY THE R.3.

EXT.P.6: COPY OF THE NO. B3-10969/96 DTD. 07/02/97 ISSUED BY R.3.

EXT.P.7: COPY OF THE JUDGEMENT DTD. 02/08/2005 IN O.P. NO. 8850/1997.

EXT.P.8: COPY OF THE REPRESENTATION DTD. 28/10/2005 TO TH R.3.

EXT.P.9: COPY OF THE PROCEEDINGS DTD. 21/07/2006 OF THE R.3.

EXT.P.10: COPY OF THE ORDER OF ASSESSMENT FOR RS.3,61,500/- TO THE PETITIONER.

EXT.P.11: COPY OF THE NOTICE OF DEMAND DTD. 28/07/2006 ISSUED TO THE PETITIONER.

RESPONDENT'S EXHIBITS: NIL.

//TRUE COPY//

prv.

V.GIRI,J.

W.P.(C) No. 31986 of 2006

Dated this the 24th day of September, 2007

JUDGMENT

The petitioner constructed a seven storied building in Sy.No.738/2002 of Ernakulam Village. According to him, the building consists of residential flats and commercial shops. 12 residential apartments were constructed by him. The rest was on commercial basis ad-measuring 658.46 sq.metres. The petitioner and the occupants of the residential apartments filed returns under Section 7 of the Building Tax Act. The entire building was assessed as a single unit and tax was computed at Rs.3,55,500/=. The order of assessment was affirmed in appeal but in revision, the District Collector directed that fresh assessment should be made treating the residential flats and the commercial space separately. Ext.P2 is an order of assessment passed as regards the apartment building and Ext.P3 is an order of fresh assessment passed as regards the commercial area. The petitioner contends that the assessment made in Ext.P3 and the consequential demand made were satisfied.

2. Subsequently vide Ext.P5, a proposal was made for rectifying Ext.P3 on the ground that the entire building should have been treated as a unit. Pursuant to Ext.P5, Ext.P6 order of assessment was passed by the Tahsildar reassessing the building tax at Rs.3,55,500/-. Giving credit to the amount

already remitted, a balance amount of Rs.2,11,740/= was demanded. This was challenged in O.P.8850/1997 and in Ext.P7 judgment, Ext.P6 was set aside by this Court. No liberty seems to have given by this Court to pass fresh orders on the matter covered by Ext.P7 judgment.

3. Apparently, thereafter a fresh order of assessment was passed as per Ext.P9 on the premise that an additional roof area of 109.21 sq.metres was put up by the petitioner, invoking Section 5(4) of the Kerala Building Tax Act. The entire building tax was reassessed and Ext.P10 is the demand notice. Exts.P9 and P10 have been challenged in this writ petition.

4. A counter affidavit has been filed by the third respondent inter alia contending that Ext.P9 is justified under Section 5(4) of the Act and in as much as that the plinth area of the building was increased by a new extension, the building tax has to be computed on the total plinth area of the building including that of the new extended area and that credit shall be given to the tax already levied and collected.

5. Learned counsel for the petitioner contends that no extension was taken out by the petitioner. At any rate, learned counsel contends, that Ext.P7 has become final and therefore there cannot be any reassessment of the entire building in terms of Section 5(4) of the Act except on the basis directed in Ext.P7 judgment. Learned counsel contends that this has not been done in the case of Ext.P9 and evidently, fresh order of assessment passed by the Tahsildar in exercise of the powers under Section 15 of the Act as per Ext.P6 seems to be the basis of Ext.P9 order of assessment. Since Ext.P6 has been set aside, obviously, the very basis of the fresh order now passed as

per Ext.P9 is untenable, the learned counsel contends.

6. After having heard the learned counsel for the petitioner and the learned Government Pleader, I am of the view that certain factual aspects, obviously, have to be considered by the statutory authorities and therefore it is appropriate that the petitioner files an appeal against Ext.P9. If there has been an additional construction, as noted in Ext.P9, obviously, the authorities are entitled to treat the same as exigible to tax under the Act. No final expression of opinion is made in this case as the petitioner is being relegated to an alternate remedy.

7. In the result, the writ petition is disposed of relegating the petitioner to the alternate remedy under the Building Tax Act. If the petitioner files an appeal against Ext.P9, within a period of one month from today, the same shall be treated as filed as within time. In the peculiar facts of the case, especially, taking note of Ext.P7 judgment, the petitioner may be permitted to file the appeal without remitting any further amount. If the appeal is filed in the manner, as aforementioned, it shall be considered and an appropriate decision may be taken in this regard, after hearing the parties.

V.GIRI, JUDGE

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